Lam Eng Rubber Factory (M) Sdn Bhd v Tribunal Rayuan Lembaga Getah Malaysia (Safic-Alcan (M) Sdn Bhd, Intervener)

HIGH COURT (PULAU PINANG) — APPLICATION FOR JUDICIAL REVISION NO 25–48 OF 2000
MOHD NOOR ABDULLAH J
9 JUNE 2003

Administrative Law *— Judicial review — Jurisdiction of High Court — Finding of facts by tribunal — Whether such finding of facts of tribunal ought to be reviewed by High Court*

Administrative Law *— Natural justice — Rules of natural justice — Procedural requirements — Component items of rules of natural justice — Whether satisfied — Whether substantive and qualitative analysis of decision could be reviewed*

Arbitration *— Procedure — Appeal — Statutory provision for resolution of disputes and appeals — Applicability of the Arbitration Act 1952 and Rules of the High Court 1980 O 69 procedure to such appeals*

Safic-Alcan (Malaysia) Sdn Bhd ('Safic-Alcan') had entered into five different contracts with the applicant for the sale and delivery of raw rubber. These contracts were subject to the Malaysian Rubber Exchange Rules and Bye Laws. A dispute arising in relation to the said contracts, the dispute was referred to arbitration. The arbitrators found the applicant in breach of the said contracts and liable to compensate Safic-Alcan damages of RM1,228,731.70. The applicant's appeal lodged with the Malaysian Rubber Board Appeals Tribunal ('the Tribunal') was dismissed. The applicant sought a writ of certiorari to quash the decision of the Tribunal. The applicant argued that the Malaysian Rubber Exchange and the Malaysian Rubber Board were both established by their respective statutes. The panel of arbitrators were appointed under these statutes. The arbitrators performed a public function and their powers were regulated by bye-laws and statutes. The arbitrators thus had a duty to act judicially and were subject to judicial review. The applicant further argued that the arbitrators had erred when they found the applicant liable for the awards as they had variously failed to take into account that Safic-Alcan had failed to give directions as to delivery within the agreed period or the extended period, Safic-Alcan had cancelled certain orders at the very last minute, Safic-Alcan had been paid certain sums as profits from the 'selling off' of a delivery and that there had been was 'force majeure' and the applicant had been prepared to meet its obligations thereafter. Safic-Alcan, as Interveners, raised a preliminary objection on the jurisdiction of the court. Counsel for the Interveners contended that an applicant to set aside an arbitrator's award ought to be filed O 69 r 4 of the Rules of the High Court 1980 ('the RHC') read together with s 24(2) Arbitration Act 1952. Such an

application had to be filed within six weeks after the publication of the award to the parties. A

Held, dismissing the application for judicial review:

(1) The Arbitration Act 1952 relates to arbitration generally and O 69 of the RHC provides for arbitration proceeding in court. However, the Malaysian Rubber Exchange (Incorporation) Act 1962 provides specifically for the settlement of disputes by arbitration, the establishment of an Arbitration Tribunal to deal with disputes and for appeals to an Appeal Tribunal. Since the Malaysian Rubber Exchange (Incorporation) Act 1952 is a special statute, which provides for arbitration and appeal, the Arbitration Act 1952 and O 69 of the RHC had no application in the present action (see pp 358H–359A). B C

(2) Over the years, judicial review had made inroads in the supervision of various statutory bodies, clubs, societies and associations. These bodies were expected to follow procedural fairness when they took actions which affected the rights and interests of their members. However, the jurisdiction of the High Court to issue certiorari was supervisory, it is neither appellate nor revisionary. Certiorari was not issued as a matter of right but only on limited grounds. Because of its supervisory role, the court did not interfere with tribunals merely because a decision was perceived to be erroneous (see pp 360B–C, 361F, H). D E

(3) What the applicant was in effect is asking was a re-evaluation of findings of facts. Whether there had been deliveries or not were findings of facts. Again, whether there had been a cancellation of orders or a lack of instructions in relation to certain deliveries were finding of facts, based on documentary evidence and witnesses. Once the Tribunal made an evaluation and arrived at a finding of fact, that finding, right or wrong, was immune from judicial review (see p 362D–E, G–H); *Non-Metallic Mineral Products Manufacturing Employees Union & Ors v South East Asia Fire Bricks Sdn Bhd* [1976] 2 MLJ 67 followed. F G

(4) Natural justice was a procedural concept and did not impose any substantive restriction on the decision-making body. It did not dictate the quality of the decision and furnished no basis to probe the merits of a decision made by an authority. The first component of the principle of natural justice, *audi alterem partem*, ie the rule that no one is to be condemned unheard, had been fully complied with. The applicant had had the right to be heard and even heard on appeal before the respondent. Although one of the managers was on the panel of arbitrators, he was not the one who heard the dispute. Thus, the application of the second component here, *nemo judex in cuasa sua*, ie no one may be a judge in his own cause, was merely a suspicion, unfounded and unsubstantiated. To proceed to hear this application would be to enlarge the H I

supervisory powers of this court beyond the ambit of judicial review (see p 363A–D).

[Bahasa Malaysia summary

Safic-Alcan (Malaysia) Sdn Bhd ('Safic-Alcan') telah menandatangani lima kontrak berasingan dengan pemohon bagi penjualan dan penghantaran getah mentah. Kontrak-kontrak tersebut tertakluk kepada Undang-undang Kecil dan Kaedah Bursa Getah Malaysia. Dengan wujudnya suatu pertikaian berkaitan dengan kontrak-kontrak tersebut, pertikaian tersebut telah dirujukkan kepada penimbangtaraan. Penimbangtara mendapati pemohon telah memungkiri kontrak-kontrak tersebut dan bertanggungjawab memberikan pampasan sebanyak RM1,228,731.70 kepada Safic-Alcan. Rayuan pemohon kepada Tribunal Rayuan Lembaga Getah Malaysia ("Tribunal tersebut') telah ditolak. Pemohon memohon writ certiorari membatalkan keputusan Tribunal tersebut. Pemohon mendakwa bahawa Bursa Getah Malaysia dan Lembaga Getah Malaysia kedua-duanya ditubuhkan dibawah statut masing-masing. Panel penimbangtara dilantik di bawah statut-statut tersebut. Penimbangtara melaksanakan suatu majlis awam dan kuasa mereka di kawalselia oleh undang-undang kecil dan statut. Jadi penimbangtara berkewajipan bertindak secara kehakiman dan tertakluk kepada kajian semula kehakiman. Pemohon terus mendakwa penimbangtara tersilap apabila mendapati pemohon bertanggungjawab bagi award-award tersebut memandangkan mereka gagal mengambilkira bahawa Safic-Alcan telah gagal memberi arahan berkaitan dengan penghantaran dalam tempoh masa yang dipersetujui atau tempoh masa yang dilanjutkan, Safic-Alcan telah membatalkan beberapa pesanan pada saat-saat terakhir, Safic-Alcan telah dibayar beberapa amaun sebagai untung daripada penjualan suatu penghantaran dan wujud 'force majeure' dan kemudian itu pemohon telah bersedia memenuhi obligasinya. Safic-Alcan, sebagai Pencelah, menimbulkan suatu bantahan awal di atas bidangkuasa mahkamah. Peguam bagi Pencelah mendakwa sesuatu permohonan mengenepikan award penimbangtaraan harus difailkan di bawah A 69 k 4 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') dibaca dengan s 24(2) Akta Timbangtaraan 1952. Permohonan seperti itu wajib difailkan dalam masa enam minggu selepas pengisyhtiharan award kepada pihak-pihak.

Diputuskan, menolak permohonan bagi kajian semula kehakiman:

(1) Akta Timbangtaraan 1952 berkuatkuasa ke atas penimbangtaraan secara amnya dan A 69 KMT memberi peruntukan bagi prosiding penimbangtaraan di mahkamah. Walaubagaimanapun Akta Bursa Getah Malaysia (Perbadanan) 1962 memberi peruntukan secara khas bagi penyelesaian pertikaian melalui penimbangtaraan, penubuhan suatu tribunal penimbangtaraan bagi menangani

pertikaian dan bagi rayuan kepada suatu tribunal rayuan. Memandangkan yang Akta Bursa Getah Malaysia Exchange (Penubuhan) 1952 adalah statut khas, yang memberi peruntukan bagi penimbangtaraan dan rayuan, maka Akta Timbangtaraan Akta 1952 dan A 69 tidak beraplikasi dalam tindakan ini (lihat ms 358H–359A). A

B

(2) Sejak kebelakangan ini, kajian semula kehakiman telah menerokai beberapa jalan baru dalam penyeliaan badan-badan berkanun, kelab, persatuan dan pertubuhan. Badan-badan ini dikehendaki mengikuti prosedur keadilan semasa mengambil tindakan yang membawa kesan pada hak dan kepentingan ahli mereka. Walau bagaimanapun, bidangkuasa Mahkamah Tinggi mengeluarkan certiorari adalah secara penyeliaan, ia bukan secara rayuan mahupun secara kajian semula. Certiorari tidak dikeluarkan secara hak tetapi di atas sebab-sebab tertentu. Memandangkan peranan penyeliaan, mahkamah tidak campur tangan dengan tribunal semata-semata kerana sesuatu keputusan dianggap salah (lihat ms 360B–C, 361F, H). C D

(3) Pemohon secara kebetulan memohon penilaian semula pendapatan fakta. Samada penghantaran telah dibuat atau tidak adalah suatu pendapatan fakta. Juga, samada wujudnya pembatalan sesuatu pesanan atau ketiadaan arahan berkaitan sesuatu penghantaran adalah pendapatan fakta, berasaskan keterangan-keterangan dokumentari dan saksi. Sebaik sahaja sesuatu Tribunal membuat penilaian dan sampai ke pendapatan fakta, maka pendapatan itu, betul atau tidak, adalah kebal daripada kajian semula kehakiman (lihat ms 362D–E, G–H); *Non-Metallic Mineral Products Manufacturing Employees Union & Ors v South East Asia Fire Bricks Sdn Bhd* [1976] 2 MLJ 67 diikut. E F

(4) Keadilan semulajadi merupakan suatu konsep prosedur dan tidak mengenakan sebarang rintangan substantif pada badan yang membuat keputusan tersebut. Ia tidak menentukan kualiti keputusan tersebut dan tidak boleh dijadikan asas meneliti merit keputusan yang dibuat sesuatu autoriti. Komponen pertama prinsip keadilan semulajadi, *audi alterem partem* iaitu perintah bahawa seseorang tidak akan dihakimi tanpa diberi pendengaran, telah dipatuhi sepenuhnya. Pemohon telah berhak diberi pendengaran dan juga telah didengar dalam rayuannya di hadapan responden. Walaupun salah seorang pengurus menduduki panel penimbangtaraan, dia bukannya ahli yang telah mendengar pertikaian tersebut. Maka aplikasi komponen di sini, *nemo judex in causa sua*, iaitu tiada sesiapa yang dapat menghakimi tindakannya sendiri, hanyalah suatu kesangsian, yang tidak terbukti dan berasas. Meneruskan dengan pendengaran permohonan ini hanya akan membawa membesarkan kuasa penyeliaan mahkamah ini melebihi tahap kajian semula kehakiman (lihat ms 363A–D).] G H I

Notes

For cases on appeal procedures in arbitration, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1252–1254.

For cases on judicial reviews generally, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 162–178.

For cases on natural justice generally, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 180–184.

Cases referred to

Non-Metallic Mineral Products Manufacturing Employees Union & Ors v South East Asia Fire Bricks Sdn Bhd [1976] 2 MLJ 67 (refd)

OSK & Partners Sdn v Tengku Noone Aziz & Anor [1983] 1 MLJ 179 (refd)

Petaling Tin Bhd v Lee Kian Chan & Ors [1994] 1 MLJ 657 (refd)

Petroliam Nasional Bhd v Nik Ramli bin Nik Hassan [2000] 2 MLJ 272 (refd)

Quah Swee Khoon v Sime Darby Bhd [2000] 2 MLJ 600 (refd)

Rex v Medical Appeal Tribunal, ex p Gilmore [1957] 1 QB 574 (refd)

Sangram Singh v Election Tribunal AIR 1955 SC 425 (refd)

Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317 (refd)

William Jacks & Co (M) Sdn Bhd v S Balasingam [2000] 7 MLJ 1 (refd)

Legislation referred to

Arbitration Act 1952 ss 23, 24(2)

Companies Act 1965

Malaysian Rubber Exchange (Incorporation) Act 1962 s 94

Malaysian Rubber Exchange Rules and Bye Laws bye law 7, Part C, s 1

Rules of the High Court 1980 O 69 r 4

Securities Act 1966

Nicholas Tan (*Gan Teik Chee & Ho*) for the applicant.
Manjit Singh Saini (*Harun Idris, Yeoh & Partners*) for the respondent.
CH Low (*Sidek, Teoh Wong & Dennis*) for the intervener.

Mohd Noor Abdullah J: This is an application (encl 7) by Lam Eng Rubber Factory (M) Sdn Bhd ('applicant') for an order of certiorari to quash the decision of the Tribunal Rayuan Lembaga Getah Malaysia ('respondent') dated 4 September 2000 which dismissed the appeal by the applicant against the Arbitration Award No 1/2000, 2/2000, 3/2000, 4/2000 and 5/2000 dated 3 May 2000 in relation to the dispute between the applicant and Safic-Alcan (M) Sdn Bhd (No Syarikat 38200-P) of the five Sale and Purchase contracts of raw rubber No 99/LB/601960/LB, 99/LB/602066/LB, 99/LB/602077/LB, 99/LB/602087/LB and 99/LB/602068/LB.

Background facts

Safic-Alcan (M) Sdn Bhd entered into five different contracts with the applicant for the sale and delivery of raw rubber in 1999. These contracts were subject to the Malaysian Rubber Exchange Rules and Bye-Laws. A dispute arose in relation to the said contracts. As a result, the dispute was referred to arbitration under bye law 7, Part C, s 1, Malaysian Rubber Exchange Rules and Bye-Laws.

On 3 May 2000, the arbitrators found the applicant to be in breach of the said contracts for the failure to deliver the rubber as agreed and is liable to compensate Safic-Alcan with costs as follows:

	Award No	Contract	Damages
(a)	1/2000	Contract 1	RM 41,046
(b)	2/2000	Contract 2	RM619,500
(c)	3/2000	Contract 3	RM185,325
(d)	4/2000	Contract 4	RM323,000
(e)	5/2000	Contract 5	RM 59,860

A total sum of damages awarded was therefore RM1,228,731.70. An appeal was lodged with the respondent and on 4 September 2000, the appeal was dismissed. In the present action, Safic-Alcan who is the intervener raised a preliminary point on the jurisdiction of the court to hear this matter by way of judicial review. The issue in this action as well as the appeal against the decision of this court is whether the court has the jurisdiction to hear the applicant's application for judicial review.

The law

Procedural point

The Intervener submits that the application for judicial review in this action is wrong in law. The counsel contends that where the applicant seeks to set aside the said arbitrator's awards dated 3 May 2000, the applicant should have filed an application under O 69 r 4 of the Rules of the High Court 1980 ('the RHC') to be read together with s 24(2) of the Arbitration Act 1952 ('the Act'). Under O 69 r 4 of the RHC, any application to remit any award under s 23 of the Act or any application to set aside an award under s 24 of the Act must be filed within six weeks after the publication of the award to the parties. With respect, in my view the Intervener's submission is misconceived. The Act relates to arbitration generally and O 69 of the RHC provides for arbitration proceeding in court; whereas the Malaysian Rubber Exchange (Incorporation) Act 1962 provides specifically for the settlement of disputes by arbitration and the establishment of arbitration tribunal to deal with the dispute and the provision for appeals by an appeal tribunal. The main prayer by the applicant in this action is for a writ of certiorari to quash the decision of the Tribunal Rayuan Lembaga Getah Malaysia, the

appellate board. Since the Malaysian Rubber Exchange (Incorporation) Act 1952 is a special statute, which provides for arbitration and appeal, the Act and O 69 of the RHC has no application at all in this present action.

As the subject matter of the said contracts is raw rubber, the present action is governed by the Malaysian Rubber Exchange (Incorporation) Act 1962 and regulated by the Malaysian Rubber Exchange Rules and Bye-Laws. It has its own arbitration provision in s 94 which states:

> (1) In the event of any dispute or difference arising either between a Member and the Corporation or between any two or more Members as to:
>
> (a) the construction or interpretation of these Rules or any bye-laws or regulations made thereunder or of any alteration or modification thereto; or
>
> (b) their several rights, privileges, obligations or liabilities arising out of any contract or business made or transacted through or under the trading regulations of the market; or
>
> (c) any other matter whatsoever affecting the rights, privileges, obligations or liabilities of the Members or any particular category or claims;
>
> such dispute or difference shall be referred to arbitration in accordance with the provisions of this Rule and (subject to any right of appeal from the decision of the arbitrator or arbitrators provided for hereunder) the award made upon the determination of such arbitration shall be final and binding on all parties concerned.
>
> (2) The Board may make such bye laws or regulations as it deems fit to provide for the setting up of an arbitration tribunal or Tribunals for the purpose of dealing with any dispute or difference to be referred to arbitration under the provisions aforementioned to provide for the procedure to be followed upon any such reference to arbitration, the fees to be paid in respect of arbitration proceedings, appeals from awards, the enforcement of awards and generally for the carrying into effect of the provisions of this Rule.

Under the Malaysian Rubber Exchange Bye-Laws, Part C, s 1 is the provision for arbitration.

Paragraph (g) provides as follows:

> Procedure for Appeals
>
> (i) Every award of a sole arbitrator or two arbitrators or their umpire shall be final unless within seven business days from the date of service of notification by the Chairman or his Deputy that such award is ready for delivery the disputants or one of them lodges an appeal with the Chairman or his Deputy, and at the same time, deposit with the Chairman or his Deputy a sum as determined by the Management Committee for such purposes. Any sum so deposited may be retained by the Corporation or dealt with by the Management Committee in such manner as it thinks fit.
>
> (ii) Every appeal properly preferred shall be decided by an Appeal Tribunal, hereinafter constituted, whose decision(s) shall be final and conclusive.

Judicial review: The law

It is submitted that the Malaysian Rubber Exchange is a corporation established by Malaysian Rubber Exchange (Incorporation) Act 1962 and the Malaysian Rubber Board is established under the Malaysian Rubber Board (Incorporation) Act 1996. The panel of arbitrators are appointed thereunder. They perform a public function and their powers are regulated by bye-laws and statutes and they have a duty to act judicially. Accordingly, the applicant's counsel submits that they are therefore subject to judicial review.

Over the years, judicial review has made inroads into various statutory bodies, public or otherwise such as clubs, societies and associations. They are expected to follow the procedural fairness when they take actions which will affect the right and interest of their members.

For example, the Federal Court in *OSK & Partners Sdn v Tengku Noone Aziz & Anor* [1983] 1 MLJ 179 held that certiorari could be issued to quash a decision of the Kuala Lumpur Stock Exchange as it is a hybrid corporation, namely a company incorporated under the Companies Act 1965 regulated by the Securities Act 1966.

Edgar Joseph Jr SCJ stated in *Petaling Tin Bhd v Lee Kian Chan & Ors* [1994] 1 MLJ 657 has this to say about judicial review at pp 670–671:

> The Court of Appeal held that the self regulatory panel was deemed to be engaged in a public law activity in its regulation of the financial markets. That it would be unthinkable to allow it to be cocooned from the attention of the courts and so the courts had jurisdiction to review the panel's decision to dismiss the applicant's complaints. ... Unquestionably, the significance of *R v Panel on Take-Overs and Mergers, ex p Datafin Plc & Anor* [1987] QB 815; [1987] 1 All ER 564; [1987] 2 WLR 699 is that it marks a further extension of boundaries of the court's jurisdiction in cases of judicial review which springs from a desire to avoid the exercise of extensive power which is not subject to the supervision of the courts.

I think it is pertinent to note the observations of Lord Denning in the case of *Rex v Medical Appeal Tribunal, ex p Gilmore* [1957] 1 QB 574:

> ... the remedy of certiorari is never to be taken away by any statute except by the most clear and explicit words. The word 'final' is not enough. That only means 'without appeal'. It does not mean 'without recourse to certiorary'. *It makes the decision final on the facts, but not final on the law.* Notwithstanding that the decision is by a statute made final, *certiorari can still issue for excess of jurisdiction or for error of law on the face of the record* ... (Emphasis added.)

The Court of Appeal in the *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 where Gopal Sri Ram JCA said at p 341:

> In my judgment, the true principle may be stated as follows:- An inferior tribunal or other decision making authority, whether exercising a quasi-judicial function or purely an administrative function has no jurisdiction to commit an error of law. Henceforth, it is no longer of concern whether these error of law is jurisdictional or not. If an inferior tribunal or other public

A decision maker does make such an error, then he exceeds his jurisdiction. So too is jurisdiction exceeded where resort is had to an unfair procedure ... or where the decision reached is unreasonable, in the sense that no reasonable tribunal similarly circumstanced would have arrived at the impugned decision. ...

Since an inferior tribunal has no jurisdiction to make an error of law, its B decision will not be immunised from judicial review by an ouster clause however widely drafted.

These are some of the authorities which set out the trite law pertaining to the extent of the High Court's power in judicial review. They described the circumstances under which judicial review can be made. However, it is C pertinent to note that in *Quah Swee Khoon v Sime Darby Bhd* [2000] 2 MLJ 600 where it was held that:

(3) It is not open for a court, in judicial review proceedings to exercise appellate powers. If a judge to whom an application for certiorari inquiries into and disturbs finding of facts based on the credibility of witnesses, he is actually exercising appellate functions. Therefore, it must D be concluded that the finding of perversity is merely a guise for interfering with findings that are only capable of being corrected in the exercise of appellate jurisdiction. As such, the learned judge had clearly exceeded the parameters of its certiorari jurisdiction in quashing the award on this ground.

E Similarly, in *William Jacks & Co (M) Sdn Bhd v S Balasingam* [2000] 7 MLJ 1, the Court of Appeal held at p 4:

It is well settled that a court cannot utilize certiorari proceedings as a cloak to entertain what, in truth, is an appeal against findings of fact. If authority is needed for that proposition, it may be found in the decision of the Indian Supreme Court in *Basappa v Nagappa*, AIR 1954 SC 440 and in *Dharangadhru* F *Chemical Works Ltd v State of Saurashtra & Ors* AIR 1957 SC 264.

Hence, the jurisdiction of the High Court to issue certiorari is supervisory, it is neither appellate nor revisional jurisdiction. The significance of this issue of jurisdiction is emphasized in the case of *Non-Metallic Mineral Products Manufacturing Employees Union & Ors v South East Asia Fire Bricks* G *Sdn Bhd* [1976] 2 MLJ 67.

The supervisory character is essential for always in the background there is the beguiling illusion that an inferior tribunal entrusted to hand down awards of a final nature may hand down awards as it likes. Therefore, the jurisdiction may for convenience be described as an extraordinary original jurisdiction.

H Because of its supervisory role, the court does not interfere with tribunals merely because a decision is erroneous. Certiorari is therefore not issued as a matter of right but only on limited grounds as mentioned in the said cases.

In this present action, the grounds relied on in support of the application by the applicant are as follows:

I (i) The arbitrators erred when they decided that the applicant is liable for the arbitrator award No 1/2000 although Safic-Alcan (M) Sdn Bhd failed to give directions as to the delivery within the agreed period.

(ii) The arbitrators had erred when they decided that the applicant is liable for the arbitrator award No 2/2000, 3/2000 and 4/2000 for deliveries for the month of January 2000 although Safic-Alcan (M) Sdn Bhd cancelled the said orders at the very last minute.

(iii) The arbitrators had erred when they decided that the applicant was liable for the Arbitrator Award No 2/2000, 3/2000 and 4/2000 for deliveries for the month of February 2000 without considering whether there was 'force majeure' and that the applicant was prepared to meet its obligations thereafter.

(iv) The arbitrators had erred when they ordered the applicant to pay the whole award for the deliveries for the month of March 2000 without considering the fact that the applicant had paid to Safic-Alcan (M) Sdn Bhd a sum of RM19,341.99 on the 19 April 2000 as profits from the 'selling off' of the delivery for the month of March 2000.

(v) The arbitrators had erred when they decided that the applicant is liable for the arbitrator award No 5/2000 although Safic-Alcan (M) Sdn Bhd failed to give directions as to the said delivery within the extended period.

What the applicant in effect is asking in its application for judicial review is essentially the re-evaluation of the findings of facts. Whether there were deliveries or not, are findings of facts. Again whether there were cancellation of orders or lack of instructions in relation to deliveries are finding of facts based on documentary evidence and witnesses.

To re-emphasize these points, Bose J in *Sangram Singh v Election Tribunal* AIR 1955 SC 425 at p 429 had this to say:

> That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. That High Courts do not, and should not, act as Courts of Appeal under Art 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily and one of the limitations imposed by the courts upon themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense.

Further, in *Petroliam Nasional Bhd v Nik Ramli bin Nik Hassan* [2000] 2 MLJ 272, the Court of Appeal said that (at p 275):

> He has submitted, quite rightly, that once the Industrial Court made an evaluation rightly or wrongly and had arrived at a finding of fact, that finding was immunized from judicial review (see also the *State of Madras v G Sundaram* AIR 1966 SC 1103, *William Jacks & Co (M) Sdn Bhd v S Balasingam*[1997] 3 CLJ 235; [1997] 3 AMR 2585).

On natural justice

On the point on natural justice, the applicant submits that no reasons were given for the decision arrived at by the respondent, the Appellate Tribunal.

A One must appreciate that natural justice is a procedural concept and does not impose any substantive restriction on the decision-making body. It furnishes no basis to probe into the merits of a decision made by an authority. In other words, it does not dictate the quality of the decision.

Natural justice has two main components:

B (i) the rule of hearing or *audi alterem partem* ie the rule that no one is to be condemned unheard; and

(ii) the rule against bias, ie *judex in cuasa sua*, ie no one may be a judge in his own cause.

I believe the first component is fully complied. The applicant has the right C to be heard and even the avenue of being heard at appeal stage before the respondent.

As to the fact that one of the managers is in the panel of arbitrators, he was not the one to hear the dispute. Further, all these appointments are done by the Management Committee. This is merely a suspicion, D unfounded and unsubstantiated.

Having considered all these points, I am of the opinion that this court has no jurisdiction to hear this application. To do so would be to enlarge its supervisory powers beyond the ambit of judicial review.

Application for judicial review dismissed.

E

Reported by Sivapragasam Kumaran

F

G

H

I